

CHAPTER 20
FOODS FOR HUMAN CONSUMPTION, PRESCRIPTION DRUGS, INSULIN,
HYPODERMIC SYRINGES, DIABETIC TESTING MATERIALS, PROSTHETIC,
ORTHOTIC OR ORTHOPEDIC DEVICES

[Sales Tax Exemption]

[Prior to 12/17/86, Revenue Department[730]]

701—20.1(422,423) Foods for human consumption. Foods for human consumption which may be purchased with food coupons shall be exempt from tax regardless of whether the retailer from whom the foods are purchased is participating in the food coupon program. On or after July 1, 1985, candy, candy-coated items, candy products and certain beverages, which are described in subrule 20.1(3) and which may be purchased with food coupons, are taxable unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

20.1(1) Foods eligible for food coupons. These foods shall include all foods which may be purchased with food coupons issued by the United States Department of Agriculture under the regulations in effect on July 1, 1974. Most products can easily be classified either as food or food products or as nonfood items. There are, however, certain items that are not readily distinguishable as food or nonfood and may present problems in judgment. The following guidelines apply to some of the more unique categories of eligible foods about which questions may arise and to those special categories of items which are eligible for purchase with food stamps. The list is not to be considered all-inclusive:

a. Garden seeds and plants. Seeds and plants for use in gardens to produce food for consumption may be purchased with food coupons. Seeds and plants eligible for purchase with food coupons include vegetable seeds and food-producing plants such as tomato and green pepper plants and fruit trees. In addition, food-producing roots, bushes, and bulbs (e.g., asparagus roots and onion sets) are eligible food items. Seeds and plants used to produce spices for use in cooking foods may also be purchased with food coupons.

b. Distilled water and ice. These items, although having some nonfood usages, are largely used as food or in food for human consumption. Unless these items are specifically labeled for nonfood use or the recipient indicates they will be used for other than human consumption, they are eligible and may be purchased with food coupons. On or after July 1, 1985, distilled water and certain other beverages, which are described in paragraph 20.1(3)“b” and which may be purchased with food coupons, are taxable unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

c. Specialty foods. This category of eligible foods includes special dietary foods (e.g., diabetic and dietetic), enriched or fortified foods, infant formulas, and certain foods commonly referred to as health food items. These items are food products which are substituted for more commonly used food items in the diet, and thus they are eligible for purchase with food coupons. Examples of items in this category of eligible foods are Metrecal, Enfamil, Sustegen, wheat germ, brewer’s yeast, sunflower seeds which are packaged for human consumption, and rose hips powder which is used for preparing tea. It is not possible to formulate a comprehensive list of eligible specialty foods. The guideline to be used to determine the eligibility of specific items is the ordinary use of a product.

NOTE: If the product is primarily used as a food or in preparing food, then it is an eligible item; if it is primarily used for medicinal purposes as either a therapeutic agent or a deficiency corrector and only occasionally used as a food, the product is not an eligible item. On or after July 1, 1985, candy, candy-coated items, candy products, and certain beverages, which are described in subrule 20.1(3) and which may be purchased with food coupons, are taxable unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

d. Snack foods. These products are food items and, therefore, are eligible. Typical examples of snack foods are candy, soft drinks, potato chips, and chewing gum. On or after July 1, 1985, candy, candy-coated items, candy products, and certain beverages, which are described in subrule 20.1(3) and which may be purchased with food coupons, are taxable unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

e. Others. There are certain eligible food items which are normally consumed only after being incorporated into foods and other ingredients. Since these items then become part of a food for human consumption, they are eligible items. An example is pectin. Pectin is the generic term for products marketed under various brand names and commonly used as a base in making jams and jellies. When pectin is incorporated into jams or jellies, it becomes part of a food for human consumption and, therefore, is an eligible food item. Other examples are lard and vegetable oils.

The following general classifications of food products are also exempt from tax unless taxable as prepared food—see rule 20.5(422,423):

- Bread and flour products
 - Cereal and cereal products
 - Cocoa and cocoa products, unless taxable in the form of candy as in paragraph 20.1(3)“a”
 - Coffee and coffee substitutes
 - Dietary substitutes (see paragraphs 20.1(1)“c” above and 20.1(2)“a” below)
 - Eggs and egg products
 - Fish and fish products
 - Frozen foods
 - Fruits and fruit products including fruit juices, unless taxable as a beverage as in paragraph 20.1(3)“b”
 - Margarine, butter, and shortening
 - Meat and meat products
 - Milk and milk products including packaged ice cream products
 - Spices, condiments, extracts, and artificial food coloring
 - Sugar and sugar products and substitutes, unless taxable in the form of candy as in paragraph 20.1(3)“a”
 - Tea
 - Vegetables and vegetable products
- Products which are made with ingredients identical to those which are eligible for purchase with food coupons, unless taxable as candy, candy-coated items, candy products, or beverages described in subrule 20.1(3) or prepared food as in subrule 20.5(2).

20.1(2) Products not eligible for purchase by food coupons. Various products may not be purchased with food coupons issued by the United States Department of Agriculture and, therefore, are not exempt from tax. They include, but are not limited to, the following:

a. Vitamins and minerals. Vitamins and minerals, which are marketed in various forms such as tablets, capsules, powders, and liquids, serve as supplements to food or food products rather than as foods, and, therefore, are not eligible for purchase with food coupons. Vitamins and minerals are also present in natural foodstuffs, and certain vitamins and minerals have been determined to be essential to nutrition. However, because these essential vitamins and minerals occur naturally in foods, a good diet will include a variety of foods that together will supply all nutrients needed. Therefore, a nutritionally adequate diet as provided for in the Food Stamp Act may be obtained without the use of specially formulated vitamin and mineral preparations and other specially formulated therapeutic products. Since these products serve as deficiency correctors or therapeutic agents to supplement diets deficient in essential nutrition rather than as foods, they are not eligible for purchase with food coupons. In addition to vitamin and mineral tablets or capsules, this category includes products such as cod liver oil, which is used primarily as a source of vitamins A and D. It is not possible to provide a comprehensive list of other such items which are primarily used for medicinal purposes or as health aids and which may be stocked by authorized firms.

b. Health aids. Patent medicines and other products used primarily as health aids or therapeutic agents are not foods as defined by the Food Stamp Act and, therefore, may not be purchased with food coupons. Such products include aspirin, cough drops or syrups and other cold remedies, antacids, and all patent medicines or other products used as health aids. In addition to these commonly used health aids, any product used primarily for medicinal purposes is ineligible. An example of such products is slippery elm powder, a demulcent which is used to soothe sore throats.

c. Items not exempt. The following general classifications of products are subject to tax:

Alcoholic beverages

Dietary supplements (see paragraphs 20.1(1)“c” and 20.1(2)“a” above)

Pet foods and supplies

Household supplies

Paper products

Soaps and detergents

Tobacco products

Cosmetics

Toiletry articles

Tonics

Lunch counter or prepared foods for consumption on the premises of the retailer.

Additionally, on or after July 1, 1985, the following classifications of products are subject to tax even when eligible for purchase with food coupons:

Foods prepared by the retailer which may be immediately consumed off of the premises of the retailer and that are sold hot or cold.

Candy, candy-coated items, and candy products as described in 20.1(3)“a.”

Certain beverages as described in 20.1(3)“b.”

20.1(3) Candy, candy-coated items, candy products, and certain beverages. Even when eligible for purchase with food coupons, candy, candy-coated items, candy products, and certain beverages are taxable on or after July 1, 1985, unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

a. Candy, candy-coated items, and candy products. Candy, candy-coated items and candy products are taxable on or after July 1, 1985, unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq. Candy, candy-coated items, and candy products include those products normally considered to be “candy.”

(1) *Candy*. Candy is a prepared food made of a sugar paste or syrup or other natural or artificial sweeteners often enriched and varied with coloring and flavoring and formed into various shapes.

(2) *Candy-coated items*. Candy-coated items are products like fruit or nuts which are dipped or otherwise substantially covered with candy and which would normally be considered candy.

(3) *Candy products*. Candy products include mixtures containing both candy and noncandy items. The inclusion of candy merely as an incidental ingredient in a product does not make the item a candy product.

(4) *Taxable candy, candy-coated items, and candy products*. Candy, candy-coated items, and candy products include: preparation of fruits, nuts or other ingredients in combination with sugar, honey or other natural or artificial sweeteners in the form of bars, drops or pieces; hard or soft candies including jelly beans, taffy, licorice, and mints; dried fruit leathers or other similar products prepared with natural or artificial sweeteners; cotton candy; candy breath mints; and mixes of candy pieces, dried fruits, nuts, and similar items.

(5) *Nontaxable items and products*. Candy, candy-coated items, or candy products do not include: jams, jellies, preserves, or syrups; frostings; dried fruits; marshmallows; unsweetened or sweetened baking chocolate in bars, pieces, or chips; breakfast cereals; prepared fruit in a sugar or similar base; ice cream or other frozen desserts covered with chocolate or similar coverings; caramel or other candy-coated apples or other fruit; candy-coated popcorn; cakes, cookies, and similar products covered with chocolate or other similar coating; candy primarily intended for decorating baked goods; and granola bars. However, these and similar items are taxable if sold as prepared food under subrule 20.5(2).

b. Beverages. In addition to alcoholic beverages, other beverages are taxable on or after July 1, 1985. Beverages are not taxed if purchased on or after October 1, 1987, with coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

(1) *Taxable beverages*. Taxable beverages are: effervescent and noneffervescent water sold in containers; soda and mineral bottled water; soft drinks carbonated and noncarbonated including but not limited to colas, ginger ale, near beer, and root beer; lemonade, orangeade, and all other drinks or punches with natural fruit or vegetable juice less than 15 percent by volume.

Beverage mixes and ingredients intended to be made into taxable beverages are taxable. See 20.1(3)“b”(2) for exceptions.

Beverage mixes or ingredients may be liquid or frozen, concentrated or nonconcentrated, dehydrated, powdered, granulated, sweetened or unsweetened, seasoned or unseasoned. Concentrates intended to be made into beverages which contain natural fruit or vegetable juice of less than 15 percent by volume are taxable.

(2) *Nontaxable beverages* are: tea, coffee, beverages that contain primary dairy products, or dairy ingredient bases, and beverages that contain natural fruit or vegetable juice of 15 percent or more by volume. However, these and similar beverages are taxable if sold as prepared food and drink under subrule 20.5(2).

Nondairy coffee “creamers” in liquid, frozen or powdered form are not beverages.

Sugar or other artificial or natural sweeteners sold separately are not taxable as beverage ingredients.

Specialty foods that are liquids or that are to be added to a liquid and that are intended to be a substitute in the diet for more commonly used food items are not beverages and are not taxable as beverages. These foods include infant formula.

This rule is intended to implement Iowa Code subsection 422.45(12).

701—20.2(422,423) Food coupon rules. Food coupon rules used in determining whether certain foods are eligible for purchase by food coupons and therefore exempt from sales tax shall be those United States Department of Agriculture regulations in effect on July 1, 1974, unless the purchase is actually made with food coupons on or after October 1, 1987, in which case the exemption applies to the purchase of all food eligible under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

20.2(1) On or after July 1, 1985, candy, candy-coated items, candy products, and certain beverages, which are described in 20.1(3) and which may be purchased with food coupons, are taxable unless purchased on or after October 1, 1987, with food coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq.

20.2(2) On or after October 1, 1987, when a purchase of items eligible for purchase with food coupons is paid with food coupons and cash, the retailer may elect to collect and remit tax in one of the following manners:

a. The entire sale of eligible food items is exempt from tax when a purchase of items eligible for purchase with food coupons is paid with food coupons and cash, or

b. The part of the payment made with food coupons is to apply first to the taxable items eligible for purchase with food coupons. The election once made by the retailer applies to all sales until the retailer notifies the department in writing that the alternate manner is to be used.

701—20.3(422,423) Nonparticipating retailer in the food coupon program. A nonparticipating retailer in the food coupon program is a retailer who may sell foods that are eligible for purchase with food coupons but by the retailer's own choice or at the discretion of the United States Department of Agriculture is not participating in the food coupon program.

701—20.4(422,423) Determination of eligible foods. Pursuant to 20.1(422,423), 20.2(422,423) and 20.3(422,423), in order to be eligible for the sales tax exemption, foods must be the same foods eligible for purchase by food coupons and shall not include foods that in their original state may have been purchased by food coupons but due to changes to the foods such as additional ingredients, preparation, or any other change of state, they are no longer foods eligible for purchase by food coupons.

701—20.5(422,423) Meals and prepared food. Meals and prepared food are subject to tax using different criteria before July 1, 1985, and on or after July 1, 1985.

20.5(1) *Before July 1, 1985.* Meals prepared for immediate consumption on or off the premises of the retailer are not eligible for the sales tax exemption. A meal shall consist of a diversified selection of foods, which would not be able to be consumed without at least some articles of tableware being present and which could not be conveniently consumed while one is standing or walking about. A meal would usually consist of a larger quantity of food than that which ordinarily comprises a single sandwich. *Treasure Island Catering Company, Inc. v. State Board of Equalization*, 1941, 19 Cal.2d 181.

a. Retailers who are considered serving meals shall include those who serve meals off the premises of the retailers such as caterers.

b. Meals that may be eligible for purchase with food coupons shall not be exempt from sales tax. This shall include carryout plate lunches that are served with articles of tableware. Tableware shall include dishes, glasses, and silverware and includes paper or plastic tableware.

20.5(2) *On or after July 1, 1985.* Sales of prepared food are taxable in three situations: All food, food products, and drinks prepared for consumption on the premises of the retailer; all foods and drinks sold by caterers; all food, food products, and drinks prepared by the retailer for immediate consumption off the premises of the retailer. Sales of prepared foods may be taxed under any of the three situations. Examples given in this subrule are meant to illustrate the application of the subrules to the facts described.

a. On-premises consumption. Sales of food products and food and drinks prepared by the retailer or others on or off the premises of the retailer for consumption on the premises of the retailer are taxable. If the food is sold for consumption on the premises of the retailer, the food is presumed to have been consumed on the premises of the retailer.

“Premises of the retailer” means the total space and facilities under control of the retailer, including buildings, grounds, and parking lots that are made available or that are available for use by the retailer, for the purpose of sale of prepared food and drink or for the purpose of consumption of prepared food and drink sold by the retailer.

Availability of self-service heating or other preparation facilities or eating facilities such as tables and chairs and knives, forks, and spoons, indicates that food, food products, and drinks are sold for consumption on the premises of the retailer and are subject to tax unless sales of prepared food are clearly identifiable as being for consumption off of the premises of the retailer in which case the sale may be taxable under 20.5(2)“c.”

Types of retailers that are generally considered to be offering food for consumption on the premises include restaurants, coffee shops, cafeterias, snack shops, and concession stands including those at recreation and entertainment facilities. Other retailers that often offer food for on-premises consumption include vending machines and mobile vendors.

Separate eating facilities need not be provided for the sale of prepared food and drink to be for consumption on the premises of the retailer if the retailer operates vending machines, mobile vendors, snack shops, or concessions and on the same premises operates facilities for such activities as recreation, entertainment, education, office work, or manufacturing.

The following examples are intended to show some of the situations in which sales are taxable as food and drink prepared for consumption on the premises of the retailer.

EXAMPLE A. A movie theater owner operates a movie theater and a concession stand in the lobby of the theater. There is not a separate area set aside for eating facilities. Sales of prepared food and drink through the concession stand are taxable as sales for consumption on the premises of the retailer.

EXAMPLE B. As a convenience to employees, a manufacturer owns and operates several food and drink vending machines located on the premises of the plant. No separate seating or other facilities for eating are provided. Sales of prepared food and drink through the vending machines are taxable as sales for consumption on the premises of the retailer.

EXAMPLE C. Mobile vendor units located throughout an office are operated by the owner of the business and are stocked with snack food priced to cover the cost of the items to the employer. No separate eating facilities are provided. Sales of prepared food through the mobile vendors are taxable as sales for consumption on the premises of the retailer.

EXAMPLE D. A bakery with seating provided for eating offers baked goods prepared by the bakery for consumption on the premises and for take-out. Baked goods are neither hot nor cold. Baked goods as well as other prepared food and drink sold for consumption on the premises are taxable. However, the baked goods sold by this bakery on a take-out basis are not taxable because they are sold neither hot nor cold.

EXAMPLE E. A separate area in an office building is set aside for vending machines with seating facilities for eating provided. The seating area and the vending machines are maintained and operated under contract by a vending company. In this case, sales of prepared food and drink through the vending machines are taxable as sales for consumption on the premises of the retailer.

b. Catered food. All sales of food, food products, and drinks on a catered basis are subject to tax.

c. Off-premises consumption. When a sale of prepared food is clearly identifiable as being for consumption off of the premises, the sale is taxable if the food is:

- (1) Hot or cold,
- (2) Prepared by the retailer, and
- (3) For immediate consumption.

“Hot or cold” means that the food is intentionally sold in a heated or cooled state. Food that is not heated or cooled is taxable if sold in combination with other heated or cooled food on a nonitemized basis. Availability of self-service heating facilities indicates intent to sell food in a heated state whether or not the food is actually heated at the time of sale.

Preparation by the retailer for immediate consumption includes, but is not limited to: cooking, mixing, sandwich making, blending, heating, or pouring. Preparation by the retailer includes customer utilization of on-premises facilities for the purpose of preparing food for immediate consumption. The division of food and drink into smaller portions is not by itself preparation by the retailer for immediate consumption off of the premises of the retailer. Food prepared for immediate consumption is food prepared to a point generally accepted as ready to be eaten without further preparation and that is sold in a manner that suggests readiness for immediate consumption. Actual immediate consumption of the food is not necessary for the sale to be taxable if the food has been prepared for immediate consumption.

Sales of foods that are often for immediate consumption off of the premises of the retailer include: delicatessen, ice cream, popcorn, and vending machine.

If a vendor does not provide seating or other eating facilities, sales of prepared food and drink by the vendor by such means as vendor-owned vending machines or mobile vendors or from snack shops or concession stands are usually for consumption off of the premises of the retailer. However, if a vendor sells prepared food at retail food establishments without separate seating or eating facilities and on the same premises operates facilities for such activities as recreation, entertainment, education, office work, or manufacturing, then the sales of prepared food can be taxable under 20.5(2)“a” depending on the type of the item sold.

The following examples are intended to show some of the situations in which sales are taxable as hot or cold food and drink prepared by the retailer for immediate consumption off of the premises of the retailer.

EXAMPLE A. The owner of a sports stadium leases concession stands at the stadium to a company that operates the stands during events at the stadium. The concession operator prepares and heats sandwiches and sells other food and drink prepared and packaged by others. No separate eating facilities are provided. All sales by the concessionaire are for immediate consumption off of the premises of the retailer. Therefore, only the sales of candy, candy-coated items, taxable beverages, as well as sandwiches and other food prepared by the retailer that are sold hot or cold are taxable.

EXAMPLE B. A convenience store without separate eating facilities sells sandwiches prepared and packaged by a wholesale distributor. Microwave ovens are available for heating the sandwiches. No separate eating facilities are available. Sales of these sandwiches are not taxable because the sandwiches are not for consumption on the premises of the retailer and because the sandwiches were not prepared by the retailer.

EXAMPLE C. An area in an office building is set aside by the owner of the building for food and drink vending machines. Separate eating facilities are provided by the owner of the building. Vending machines and accompanying microwave ovens located in the area are owned and operated by a vending service under contract with the owner of the building. The retailer prepares none of the food placed in the machines. The vending service is the retailer. Sales of food and drink through the vending machines are for immediate consumption off of the premises of the retailer. Thus, sales of food and drink through the vending machines are not taxable unless the sales involve candy, candy-coated items, or taxable beverages.

d. Sales of food and beverages for human consumption by certain nonprofit organizations. Sales of food and beverages made by certain organizations are exempt. Retroactively to July 1, 1988, the gross receipts from sales of food and beverages for human consumption by organizations are exempt from sales tax if the organization is nonprofit, principally promotes a food or beverage product for human consumption that is produced, grown, or raised in Iowa, and is exempt from federal income tax under Section 501(c) of the Internal Revenue Code. Refunds are allowed for tax, penalty, and interest paid by such organizations on sales made between July 1, 1988, and June 30, 1998. For details, examples, and requirements on claiming a refund, see 701—17.32(422).

This rule is intended to implement Iowa Code Supplement section 422.45 as amended by 1998 Iowa Acts, chapter 1091.

701—20.6(422,423) Vending machines. Before July 1, 1985, any food item which is sold through a vending machine shall not be exempt from sales tax. On or after July 1, 1985, prepared food and drinks sold through vending machines will be taxable either if sold for consumption on the premises of the retailer under 20.5(2)“a” or if prepared by the retailer for immediate consumption off of the premises of the retailer under 20.5(2)“c.” Candy, candy-coated items, candy products, and beverages described in subrule 20.1(3) are taxable when sold through vending machines.

This rule is intended to implement Iowa Code section 422.45.

701—20.7(422,423) Prescription drugs and devices. Sales of prescription drugs and devices as defined in 20.7(1) and dispensed for human use or consumption in accordance with 20.7(2) and 20.7(3) shall be exempt from sales tax. On and after July 1, 1992, rentals of prescription devices as defined in subrule 20.7(1) below are exempt from service tax. Gross receipts from the sales of oxygen prescribed by a licensed physician or surgeon, osteopath, or osteopathic physician or surgeon for human use or consumption are exempt from tax. On and after July 1, 1992, gross receipts from the sales of any oxygen purchased for human use or consumption (whether prescribed or not) are exempt from tax.

20.7(1) Definitions of “prescription drug” for three separate periods of time.

a. Prior to July 1, 1987, a prescription drug means any of the following:

(1) Any drug or medicine the label of which is required by federal law to bear the statement: “Caution: Federal law prohibits dispensing without a prescription”, or

(2) Any drug or medicine which, because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to prescribe, administer, or dispense such drug or medicine, or

(3) A new drug or medicine which is limited under state law to use under the professional supervision of a practitioner licensed by law to prescribe, administer, or dispense drugs or medicine.

b. For sales occurring between July 1, 1987, and June 30, 1993, a “prescription drug” is any of the following:

(1) A substance for which federal or state law requires a prescription before it may be legally dispensed to the public,

(2) A drug or device that under federal law is required prior to being dispensed or delivered to be labeled with the following statement: “Caution: Federal law prohibits dispensing without a prescription”, or

(3) A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only, or is restricted to use by a practitioner only.

c. For sales or rentals occurring on and after July 1, 1993, a “prescription drug” and “medical device” are defined as follows:

(1) A “medical device” means equipment or supplies, including orthopedic or orthotic devices, intended to be prescribed by a practitioner for human use to an ultimate user.

(2) A “prescription drug” is a drug intended to be dispensed for human consumption to an ultimate user pursuant to a prescription or medication order from a practitioner.

(3) An “ultimate user” is any individual who has lawfully obtained and possesses a prescription drug or medical device for the individual’s own use or for the use of a member of the individual’s household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed or prescribed. The phrase does not include any entity created by law, such as a corporation or partnership.

On and after July 1, 1993, the sale or rental of a medical device or a prescription drug is exempt from tax only if the device or drug is intended to be prescribed or dispensed to an ultimate user. A drug or device is intended to be prescribed or dispensed to an ultimate user only if the drug or device is obtained by or supplied or administered to an ultimate user for placement on or in the ultimate user’s body.

EXAMPLE A: Hospital X purchases a new type of device which scans the inside of the human body to uncover diseased organs. The device can be used only on the order of a practitioner. The device is prescribed, but since, by its very nature, the device cannot be dispensed to an ultimate user, its sale is not exempt from tax. However, see rule 701—18.59(422,423) for a description of an exemption applicable to all purchases made on or after July 1, 1998, by nonprofit hospitals licensed under Iowa Code chapter 135B.

EXAMPLE B: A patient enters Hospital Y and pursuant to a practitioner’s prescription, a pacemaker is inserted in the patient’s body. The pacemaker is dispensed to an ultimate user and its sale is exempt from tax.

EXAMPLE C: A physician prescribes a tranquilizer for a patient who is chronically nervous. The patient uses the prescription to purchase the tranquilizer at a pharmacy. The purchase is exempt from tax.

For purposes of this subrule, any medical device or drug prescribed in writing by a licensed physician, surgeon, osteopath, osteopathic physician or surgeon, or other person authorized by law to an ultimate user for human use or consumption, shall be deemed a device or drug exempt from tax if a prescription is required or permitted under Iowa state or federal law.

EXAMPLE A: A common painkiller is sold over the counter in doses of 200 milligrams per tablet. In doses of 600 milligrams per tablet, federal law requires a prescription before the drug can be dispensed. Sales of 600 milligram tablets by prescription are exempt from tax.

EXAMPLE B: A federal law permits but does not require the painkiller mentioned in Example A to be prescribed by a practitioner in dosages of 200 milligrams per tablet. A practitioner might prescribe the painkiller in the over-the-counter dosage, for example, to impress upon a patient the importance of taking the drug. Sales of 200 milligram tablets by prescription are exempt from tax.

See rules 20.8(422,423), 20.9(422,423) and 20.10(422,423) for examples of medical devices sold without a prescription but exempt from tax.

20.7(2) *Licensed persons qualified for dispensing of prescription drugs or prescription devices.* In order for a prescription drug or device to qualify for an exemption it must be dispensed by one of the following persons:

a. Any store or other place of business where prescription drugs are compounded, dispensed or sold by a person holding a license to practice pharmacy in Iowa, and where prescription orders for prescription drugs or devices are received or processed in accordance with pharmacy laws.

b. Persons licensed by the state board of medical examiners to practice medicine or surgery in Iowa.

- c. Persons licensed by the state board of medical examiners to practice osteopathic medicine or surgery in Iowa.
- d. Persons licensed by the state board of podiatry to engage in the practice of podiatry in Iowa.
- e. Persons licensed by the state board of dentistry to practice dentistry in Iowa.
- f. Persons licensed prior to May 10, 1963, to practice osteopathy in Iowa.
- g. Persons licensed by the optometry examiners as therapeutically certified optometrists.
- h. Any other person authorized under Iowa law to dispense prescription drugs or devices in the course of professional practice in this state.
- i. Any person licensed in another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs or devices.

20.7(3) *Disposition of prescription drugs and devices.* Prescription drugs or devices may be dispensed either directly from one of the persons licensed in 20.7(2) who may also prescribe drugs or devices or by a pharmacist upon receipt of a prescription from one of the persons licensed to prescribe. A prescription received by a licensed pharmacist from one of the persons licensed in 20.7(2) who may also prescribe drugs or devices shall be sufficient evidence that a drug or device is exempt from sales tax. When a person who prescribes a drug or device is also the dispenser, the drug or device will not require a prescription by such person but the drug or device must be recorded as if a prescription would have been issued or required. If this condition is met, the gross receipts from the sale of the drug or device shall be exempt from sales tax.

20.7(4) *Others required to collect sales tax.* Any person other than those who are allowed to dispense drugs or devices under 20.7(2) shall be required to collect sales tax on any prescription drugs or devices.

20.7(5) *Prescription drugs and devices purchased by hospitals for resale.* Hospitals have purchased prescription drugs or devices for resale to patients and not for use or consumption in providing hospital services only if the following circumstances exist: (1) the drug or device is actually transferred to the patient; (2) the drug or device is transferred in a form or quantity capable of a fixed or definite price value; (3) the hospital and the patient intend the transfer to be a sale; and (4) the sale is evidenced in the patient's bill by a separate charge for the identifiable drug or device. See rule 701—18.31(422,423) for a discussion generally of sales for resale by persons performing a service. Also see rule 701—18.59(422,423) for an exemption applicable to all purchases of goods and services purchased on or after July 1, 1998, by a nonprofit hospital licensed under Iowa Code chapter 135B.

EXAMPLE A: A hospital purchases a bone saw blade and uses the blade to cut the bone of patient X during hip replacement surgery. This dulls the blade to the point that the blade cannot be used again and is discarded. The hospital bills patient X for "one bone saw blade—\$30.00". In spite of the separate charge for an identifiable piece of property, the hospital did not purchase the bone saw blade for resale. The blade was used up by the hospital, not transferred to the ownership of X. Since there was no transfer, there was no sale, thus no purchase for resale.

EXAMPLE B: A hospital buys lotion for use in massages given to patients by nurses aides. In spite of the fact that one can argue that a transfer of ownership of the lotion from hospital to patient occurred, the lotion was not purchased for resale. No real intent to sell the lotion to patients ever existed; the lotion was not transferred to patients in a quantity capable of a definite price value; and there is no separate charge for the lotion.

A hospital's purchase of a prescription drug or device for purposes other than resale will still be exempt from tax if a device or drug is intended to be prescribed to an ultimate user and the hospital's use of the drug or device is otherwise exempt under 20.7(1).

This rule is intended to implement Iowa Code section 422.45.

701—20.8(422,423) Exempt sales of nonprescription medical devices, other than prosthetic devices. A prescription is not required for sales of the medical devices mentioned in subrule 20.8(1) to be exempt from tax if those devices are purchased for human use or consumption.

20.8(1) Definitions.

“*Anesthesia trays*” includes, without limit, paracervical anesthesia trays, saddle block anesthesia trays, spinal anesthesia trays, and continuous epidural anesthesia trays.

“*Biopsy*” means the removal and examination of tissue from a living body, performed to establish a precise diagnosis.

“*Biopsy needles*” includes, without limit, needles used to perform liver, kidney, other soft tissue, bone, and bone marrow biopsies. Menghini technique aspirating needles, rosenthal-type needles, and “J” Jamshidi needles are all examples of biopsy needles.

“*Cannula*” means a tube inserted into a body duct or cavity to drain fluid, insert medication including oxygen, or to open an air passage. Examples are lariat nasal cannulas and ableson cricothyrotomy cannula.

“*Catheter*” means a tubular, flexible, surgical instrument used to withdraw fluids from or introduce fluids into a body cavity, or for making examinations. Examples are: robinson/nelaton catheters, all types of foley catheters (e.g., pediatric and irrigating), three-way catheters, suction catheters, IV catheters, angiocath catheters and male and female catheters.

“*Catheter trays.*” Universal foley catheter trays, economy foley trays, urethral catheterization trays and catheter trays with domed covers are nonexclusive examples of these trays.

“*Diabetic testing materials*” means all materials used in testing for sugar or acetone in the urine, including, but not limited to, Clinitest, Tes-tape, and Clinistix; also, all materials used in monitoring the glucose level in the blood, including, but not limited to, bloodletting supplies and test strips.

“*Drug infusion device*” means a device designed for the slow introduction of a drug solution into the human body. The term includes devices which infuse by means of pumps or gravity flow (drip infusion).

“*Fistula*” means an abnormal passage usually between the internal organs or between an internal organ and the surface of the body.

“*Hypodermic syringe*” means an instrument for applying or administering liquid into any vessel or cavity beneath the skin. This includes the needle portion of the syringe if it accompanies the syringe at the time of purchase, and it also includes replacement needles.

“*Insulin*” means a preparation of the active principle of the pancreas, used therapeutically in diabetes and sometimes in other conditions.

“*Interocular lens*” means a lens located inside the eye.

“*Kit*” means a combination of medical equipment and supplies used to perform one particular medical procedure which is packaged and sold as a single item.

“*Medical device,*” for the purposes of this rule, means medical equipment or supplies intended to be dispensed for human use with or without a prescription to an ultimate user.

“*Myelogram*” means a radiographic picture of the spinal cord. A “radiographic” picture is one taken using radiation other than visible light.

“*Nebulizer*” means a mechanical device which converts a liquid to a spray or fog.

“*Oxygen equipment*” means all equipment used to deliver medicinal oxygen including, but not limited to, face masks, humidifiers, cannula, tubing, mouthpieces, tracheotomy masks or collars, regulators, oxygen concentrators and oxygen accessory racks or stands.

“*Set.*” See “Kit” above.

“*Tray.*” See “Kit” above.

20.8(2) Sales of the following medical devices are exempt from tax. If a medical device is of such a type that it can be rented as well as sold, the rental of that device is exempt as of the date that the sale of that device is exempt, except as set out in “b” below.

- a. Insulin, hypodermic syringes, and diabetic testing materials.
- b. As of July 1, 1992, sales of oxygen equipment; as of July 1, 1993, the rental of oxygen equipment.
- c. Effective July 1, 1994, and retroactive to July 1, 1993, sales of hypodermic needles, anesthesia trays, biopsy trays and needles, cannula systems, catheter trays, invasive catheters, dialyzers, drug infusion devices, fistula sets, hemodialysis devices, insulin infusion devices, interocular lenses, irrigation solutions, intravenous administering sets, solutions and stopcocks, myelogram trays, nebulizers, small vein infusion kits, spinal puncture trays, transfusion sets and venous blood sets are no longer taxable. A consumer or user who has paid the tax can then file a refund claim for the tax paid. Claims for refund of tax, interest, or penalty paid for the period of July 1, 1993, to June 30, 1994, must be limited to \$5,000 in the aggregate and will not be allowed unless filed prior to June 30, 1995. If the amount of claims for the period totals more than \$5,000, the department will prorate the \$5,000 among all the claims.

20.8(3) Component parts. Sales of any component parts of the trays, systems, devices, sets, or kits listed above are taxable unless the sale of a component part, standing alone, is otherwise exempt under these rules. For instance, the sale of a biopsy needle or an invasive catheter would be exempt from tax whether or not it was purchased for use as a component part in a biopsy tray or catheter tray, so long as the needle or catheter will be dispensed for human use to an ultimate user. Conversely, sales of disposable latex gloves, rayon balls, forceps, and specimen bottles are exempt when those items are sold as part of a catheter tray, but are not exempt when those items are sold individually.

20.8(4) Sales of the medical devices mentioned in this rule may be exempt for periods other than those set out in this rule. For instance, a medical device might be prescribed by a practitioner or its sale or rental might be “covered” by Medicare or Medicaid. See subrule 20.7(1) and rule 20.10(422,423) for more information.

This rule is intended to implement Iowa Code section 422.45.

701—20.9(422,423) Prosthetic, orthotic and orthopedic devices.

20.9(1) *Prosthetic devices.* Sales or rental of prosthetic devices shall be exempt from sales tax. This rule is applicable to sales or rental of prosthetic devices made on or after April 1, 1988.

20.9(2) *Orthotic and orthopedic devices.* Sales or rental of orthotic and orthopedic devices prescribed for human use which meet the provisions of subrules 20.9(3) and 20.9(4) shall be exempt from sales tax. This rule is applicable to sales or rental of orthotic and orthopedic devices made on or after April 1, 1988.

20.9(3) Definitions.

a. “*Prosthetic device*” means a piece of special equipment designed to be a replacement or artificial substitute for an absent or missing part of the human body and intended to be dispensed with or without a prescription to an ultimate user. See subrule 20.7(1), paragraph “c,” for a definition and examples of the term “ultimate user.” The term “prosthetic device” includes ostomy, urological, and tracheostomy devices and supplies.

The following is a nonexclusive list of prosthetic devices:

Artificial arteries	Drainage bags	Penile implants
Artificial breasts	Hearing aids	Prescription eyeglasses
Artificial ears	Ileostomy devices	Stoma bags
Artificial eyes	Intraocular lenses	Tracheal suction catheters
Artificial heart valves	Karaya paste	Tracheostomy care and cleaning starter kits
Artificial implants	Karaya seals	Tracheostomy cleaning brushes
Artificial larynx	Organ implants	Tracheostomy tubes
Artificial limbs	Ostomy belts	Urinary catheters
Artificial noses	Ostomy clamps	Urinary drainage bags
Artificial teeth	Ostomy cleaners and deodorizers	Urinary irrigation tubing
Cardiac pacemakers	Ostomy pouch	Urinary pouches
Contact lenses	Ostomy stoma caps and paste	
Cosmetic gloves		

b. “*Orthotic device*” means a piece of special equipment designed to straighten a deformed or distorted part of the human body, such as corrective shoes or braces. An orthotic device is an orthopedic device.

c. “*Orthopedic device*” means a piece of special equipment designed to correct deformities or to preserve and restore the function of the human skeletal system, its articulations and associated structures.

The following is a nonexclusive list of orthopedic devices:

Abdominal belts	Clavicle splints	Nerve stimulators
Alternating pressure mattresses	Corrective braces	Orthopedic implants
Alternating pressure pads	Corrective shoes	Orthopedic shoes
Anti-embolism stockings	Crutch cushions	Patient lifts
Arch supports	Crutch handgrips	Plaster (surgical)
Arm slings	Crutch tips	Rib belts
Artificial sheepskin	Crutches	Rupture belts
Bone cement	Decubitus prevention devices	Sacroiliac supports
Bone nails	Dorsolumbar belts	Sacrolumbar belts
Bone pins	Dorsolumbar supports	Sacrolumbar supports
Bone plates	Elastic bandages	Shoulder immobilizers
Bone screws	Elastic supports	Space shoes
Bone wax	Exercise devices	Splints
Braces	Head halters	Traction equipment
Canes	Hernia belts	Transcutaneous electrical nerve stimulators (tens unit)
Casts	Iliac belts	Trapezes
Cast heels	Invalid rings	Trusses
Cervical braces	Knee immobilizers	Walkers
Cervical collars	Lumbosacral supports	Water beds
Cervical pillows	Muscle stimulators	Wheelchairs

d. “*Related devices.*” Sales or rental of devices which are used exclusively in conjunction with prosthetic, orthotic, or orthopedic devices shall be exempt from tax. *Daw Industries, Inc. v. United States*, 714 F.2d 1140 (Fed. Cir. 1983).

e. “*Medical equipment and supplies.*” The scope of the term medical equipment and supplies is broader than the terms prescription drugs or medical devices. While all exempt prescription drugs are medical supplies and all exempt medical devices are medical equipment, not all medical equipment and supplies are exempt medical devices or prescription drugs. The following is a nonexclusive list of items which are medical equipment or supplies, but are not prescription drugs or medical devices exempt from tax under subrules 20.7(1), 20.9(1), 20.9(2), and rule 20.8(422,423). Sales of the below-listed items would generally be taxable. However, for the period between July 1, 1992, and June 30, 1993, sales of the listed items would be exempt from tax if covered by Title XVIII or XIX of the federal Social Security Act. See rule 20.10(422,423).

Adhesive bandages	*Drug infusion devices (other than hypodermic syringes)	*Nebulizers
*Anesthesia trays	Dry aid kits for ears	*Needles (hypodermic)
Aneurysm clips	EKG paper	Overbed tables
Arterial bloodsets	Earmolds	Pacemaker equipment
Aspirators	Electrodes (other than tens units)	Page turning devices
Athletic supporters	Emesis basins	Pap smear kits
Atomizers	Enema units	Paraffin baths
Autolit	First-aid kits	Physicians instruments
Back cushions	*Fistula sets	Pigskin
Bathing aids	Foam slant pillows	Plasma extractors
Bathing caps	Gauze bandages	Plasmapheresis units
Bedpans	Gauze packings	Plastic heat sealers
Bedside rails	Gavage containers	Prescribed device repair kits
Bedside tables	Geriatric chairs	Respirators
Bedside trays	Grooming aids	Resuscitators
Bedwetting prevention devices	Hand sealers	Sauna baths
Belt vibrators	Hearing aid carriers	Security pouches
*Biopsy needles	Hearing aid repair kits	Servipak dialysis supplies
*Biopsy trays	Heart stimulators	Shelf trays
*Blood administering sets	Heat lamps	Shower chairs
Blood cell washing equipment	Heat pads	Side rails
Blood pack holders	*Hemodialysis devices	Sitz bath kit
Blood pack trays	Hemolators	*Small-vein infusion kits
Blood pack units	Hospital beds	Specimen containers
Blood pressure meters	Hot water bottles	*Spinal puncture trays
Blood processing supplies	Ice bags	Sponges (surgical)
Blood tubing	Ident-a-bands	Stairway elevators
Blood warmers		

Breast pumps	Incontinent garments	Steri-peel
Breathing machines	Incubators	Stools
*Cannula systems	Infrared lamps	*Stopcocks
Cardiac electrodes	Inhalators	(intravenous)
Cardiopulmonary equipment	*Insulin infusion devices	Suction equipment
*Catheter trays	Iron lungs	Sunlamps
Chair lifts	Irrigation apparatus	Surgical bandages
Clamps	*Irrigation solutions	Surgical equipment
Clip-on ash trays	*IV administering sets	Suspensories
Commode chairs	IV connectors	Sutures
Connectors	*IV solutions	Thermometers
Contact lens cases	*IV tubing	Toilet aids
Contact lens solution	*Kidney dialysis machines	Tourniquets
Convuluted pads	Laminar flow equipment	Transfer boards
Corrective pessaries	Latex gloves	*Transfusion sets
Cotton balls	Leukopheresis pumps	Tube sealers
Dialysis chairs	Lymphedema pumps	Underpads
Dialysis supplies	Manometer trays	Urinals
*Dialyzers	Massagers	Vacutainers
Dietetic scales	Maternity belts	Vacuum units
Disposable diapers	Medigrade tubing	Vaporizers
Disposable gloves	Modulung oxygenators	*Venous blood sets
Disposable underpads	Moist heat pads	Vibrators
Donor chairs	*Myelogram trays	Whirlpools
Dressings	Myringotomy tubes	X-ray film

*Sales of these medical devices are exempt as of July 1, 1993. However, see subrule 20.8(2) for an explanation of the unusual circumstances of the first year for which this exemption is in effect.

20.9(4) “*Prescribed*” shall mean a written prescription or an oral prescription, later reduced to writing, issued by:

- a. Persons licensed by the state board of medical examiners to practice medicine or surgery in Iowa.
- b. Persons licensed by the state board of medical examiners to practice osteopathic medicine or surgery in Iowa.
- c. Persons licensed by the state board of podiatry to engage in the practice of podiatry in Iowa.
- d. Persons licensed by the state board of dentistry to practice dentistry in Iowa.
- e. Persons licensed prior to May 10, 1963, to practice osteopathy in Iowa.
- f. Persons licensed by the optometry examiners as therapeutically certified optometrists.
- g. Any other person authorized under Iowa law to dispense prescription drugs or medical devices requiring a prescription in the course of professional practice in this state.
- h. Any person licensed in another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs.

20.9(5) *Power devices.* Sales or rental of power devices especially designed to operate prosthetic, orthotic or orthopedic devices shall be exempt from tax.

This rule is intended to implement Iowa Code sections 422.45(15) and 423.4(4).

701—20.10(422,423) Sales and rentals covered by Medicaid and Medicare. Between July 1, 1992, and June 30, 1993, gross receipts from the sale or rental of drugs, devices, equipment and supplies (“medications”) which are covered by Title XVIII (Medicare) or Title XIX (Medicaid) of the federal Social Security Act are exempt from tax.

A “covered sale or rental” is one for which any portion of the cost of medications is paid by the state of Iowa or the federal government as required by the Medicaid or Medicare programs. A sale or rental is “covered” even if a user of medications is required to pay a certain percentage or fixed amount of its cost. Covered sales or rentals include those for which a user of medications is reimbursed the cost of a purchase or rental; or sales or rentals for which any portion of the cost is paid by any private insurance company administering the Medicaid or Medicare programs on behalf of the state of Iowa or the federal government. The direct purchase or rental of any medications by the state of Iowa or the federal government is exempt from tax under existing law, and this rule is not applicable to it.

For an extensive list of medications, the purchase or rental of which is covered by Medicaid, see 441—Chapter 78, Iowa Administrative Code.

701—20.11(422,423) Reporting. Retailers are required to keep records of and report the actual total gross sales for each filing or reporting period. A deduction may be taken for all tax-exempt sales but a record must be kept to substantiate all deductions taken.

Certain retailers finding it difficult to maintain detailed records of their taxable and nontaxable retail sales may alleviate this difficulty by the use of a formula method which will reasonably approximate the actual taxable receipts.

Written approval must be obtained from the audit and compliance division of the department to use a formula method. If a retailer requests an alternate formula, the retailer shall first list the reasons why an alternate formula is necessary and, secondly, shall outline the proposed formula in detail. If approval is given, the department reserves the right to withdraw or require an update in procedure at any time.

The use of the formula is an authorization for reporting the most accurate amount of taxable and nontaxable gross receipts but the retailer shall be responsible for the actual tax liability. Additional assessments may be made if an audit discloses the formula is not producing the proper tax payments.

These rules are intended to implement Iowa Code chapters 422 and 423.

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